

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

COMMONWEALTH OF PUERTO RICO, *et al.*,¹
Debtors.

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

UNION DE TRABAJADORES DE LA
INDUSTRIA ELECTRICA Y RIEGO (UTIER),

Plaintiff,

v.

PUERTO RICO ELECTRIC POWER
AUTHORITY; THE FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD FOR PUERTO
RICO; JOSÉ B. CARRIÓN III; ANDREW G.
BIGGS; CARLOS M. GARCÍA; ARTHUR J.
GONZÁLEZ; JOSÉ R. GONZÁLEZ; ANA J.
MATOSANTOS; DAVID A. SKEEL, JR. AND
JOHN DOES 1-7.,

Defendants.

Adv. Proc. No. 17-228-LTS

INFORMATIVE MOTION TO SET BRIEFING SCHEDULE

To the Honorable Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (“the Commonwealth”) and Puerto Rico Electric Power Authority (“PREPA”) (collectively, the “Debtors”, and each, a “Debtor”), by and through

¹ The Debtors in the underlying Title III Case, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474).

the Financial Oversight and Management Board for Puerto Rico (the “Board”), as the Debtor’s representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² and, in their official capacities, José B. Carrión III, Andrew G. Biggs, Carlos M. García, Arthur J. Gonzalez, José R. González, Ana J. Matasantos, David A. Skeel, Jr., and John Does 1-7 (together, the “Non-Debtor Defendant Movants”) (with Debtors, collectively, “Defendants”), respectfully submit this Informative Motion regarding the scheduling of briefing for Defendants’ oppositions to Aurelius Investment, LLC, Aurelius Opportunities Fund, LLC, and Lex Claims, LLC’s (“Aurelius”) Objection and Motion to Dismiss Title III petition (the “Motion to Dismiss”) (Dkt. 913; Bankr. No. 17-3283) and Aurelius’s Motion for Relief from the Automatic Stay (the “Lift Stay Motion”) (Dkt. 914; Bankr. No. 17-3283); and Defendants’ motions to dismiss the adversary complaint in Unión De Trabajadores de la Industria Eléctrica y Riego’s (“UTIER”) Adversary Complaint (the “Adversary Complaint”) (Dkt. 1; Adv. Proc. No. 17-228) filed in the PREPA Title III case.

STATEMENT

For the reasons set forth below, and after conducting the required meet-and-confer process with Plaintiffs’ counsel, Defendants propose an amended briefing schedule that would extend the time for the parties to file their submissions by approximately two weeks and would coordinate the deadlines for the two cases. It would not change the scheduled argument date on the motions, which for Aurelius is set on November 15, 2017, and which has not been set for UTIER.

² PROMESA has been codified in 48 U.S.C. §§ 2101-2241.

Background

Currently pending before the Court are three filings that raise near-identical questions of law challenging the Board's composition and authority under PROMESA and alleging violations of the Appointments Clause of the U.S. Constitution, Art. II, § 2, cl. 2, and the separation of powers doctrine.

On August 6, 2017, UTIER filed its Adversary Complaint in the PREPA Title III action seeking a declaratory judgment and an injunction preventing all Title III action from continuing. Pursuant to Local Rule 7004-2 and § 7012 of the Bankruptcy Code, Defendants' current deadline to respond to the Adversary Complaint is September 13, 2017. No further briefing deadlines have been set, and the Court has not scheduled argument.

On August 7, 2017, Aurelius filed its motion seeking dismissal of the entire Title III case, and its motion seeking an order that (1) the automatic stay does not apply to its contention, or alternatively that (2) it should be relieved from the automatic stay to permit filing of a separate complaint. Pursuant to the Court's August 17, 2017 Order, the current deadline for Defendants to respond to both the Motion to Dismiss and the Lift Stay Motion is September 19, 2017. (Dkt. 1068; Bankr. No. 17-3283). Aurelius's reply briefs are due on September 26, 2017. The Court scheduled argument on Aurelius's motions to dismiss and to lift the stay in connection with the November Omnibus Hearing, which is scheduled for November 15, 2017.

On August 15, 2017, the U.S. Department of Justice filed a notice of its intent to notify the Court by October 6, 2017, whether it will exercise its statutory right to intervene in the Aurelius motions, pursuant to 28 U.S.C. § 2403(a). (Dkt. 1042; Bankr. No. 17-3283). If the Department of Justice chooses to do so, its brief would be due on November 5, 2017. (Dkt. 1068; Bankr. No. 17-3283).

On August 16, 2017, UTIER filed a Notice of Constitutional Challenge to Federal Statute. On August 18, 2017, the Court entered an order stating that the U.S. Department of Justice must notify the Court by October 16, 2017, whether it will exercise its statutory right to intervene in the UTIER adversary proceeding, pursuant to 28 U.S.C. § 2403(a). If the Department of Justice chooses to do so, its brief would be due on November 10, 2017. (Dkt. 22; Adv. Proc. No. 17-228).

Argument

Defendants respectfully request a modest extension of time to file their responses to Aurelius's and UTIER's submissions.

On the current schedule, the parties to each case will have completed their entire briefing before the Government is required to notify the Court of its plans to intervene or not. That leaves limited time for the parties to consult and exchange views with the Government before making their submissions. That consultation is a standard and important practice in a case like this one, as it involves a challenge to the constitutionality of a federal statute and implicates the significant interests of a broad range of government agencies. Briefly extending the deadlines for the parties to file their papers by two to three weeks will aid their presentations to the Court, without delaying any scheduled hearing or the Court's consideration of the parties' arguments.

In addition, the Board has recently retained Donald B. Verrilli, Jr. and the law firm of Munger, Tolles & Olson LLP as co-counsel with respect to these challenges. This modest additional extension of time will allow new co-counsel to assist with the development and presentation of these critical issues to the Court.

Finally, on the current schedule, Defendants are required to submit their responses in the two cases on separate days (September 13 and September 19), even though the cases involve

near-identical challenges and raise similar arguments in support of the requested relief. It would be more efficient for the parties and the Court to permit Defendants to submit their responses at the same time, with opposing parties' replies due on a uniform date.

Accordingly, the Defendants propose the following briefing schedule:

In re: Commonwealth of Puerto Rico, et al.

1. Defendants' opposition briefs to Aurelius's Motion to Dismiss and Lift Stay Motion shall be due no later than October 3, 2017.

2. Aurelius's reply briefs shall be due no later than October 17, 2017.

UTIER v. PREPA, et al.

1. Defendants' answer to UTIER's adversary complaint, including its motion to dismiss, shall be due no later than October 3, 2017.

2. UTIER's response brief shall be due no later than October 17, 2017.

3. Defendants' reply brief shall be due no later than October 31, 2017.

If the Court grants the motion to extend deadlines as requested, Defendants further request that the Court extend the deadlines for all parties in interest³ with respect to the motions.

Counsel for the parties met and conferred on September 1, 2017 and agreed on the foregoing schedule, subject to the Court's approval.

Accordingly, Defendants respectfully request that the Court enter a scheduling order substantially in the form attached hereto as **Exhibit 1**.

³ For the avoidance of any doubt, the parties in interest include the Puerto Rico Fiscal Agency and Financial Advisory Authority.

Dates: September 5, 2017
San Juan, Puerto Rico

s/ Hermann D. Bauer

Hermann D. Bauer

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representative of The Commonwealth of Puerto
Rico and The Puerto Rico Electric Power
Authority*

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer

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JOHN DOES 1-7.,

Defendants.

Adv. Proc. No. 17-228-LTS

[PROPOSED] ORDER TO SET A BRIEFING SCHEDULE

The parties having met and conferred and proposed a briefing schedule, and good cause being shown, it is hereby **ORDERED THAT**:

¹ The Debtors in the underlying Title III Case, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); and (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474).

Defendants' respective opposition briefs to Aurelius's Motion to Dismiss and Lift Stay Motion and Defendants' answer to UTIER's adversary complaint, including its motion to dismiss, shall be due no later than **October 3, 2017**.

Aurelius's respective reply briefs and UTIER's response brief shall be due no later than **October 17, 2017**.

Defendants' reply brief to UTIER's response brief shall be due no later than **October 31, 2017**.

Dated: September ____, 2017

SO ORDERED:

Honorable Laura Taylor Swain
United States District Judge